IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

Crl.MC.No. 2688 of 2007()

CRRP.153/2004 of I ADDL. SESSIONS COURT, PALAKKAD
MC.49/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT-III, PALAKKAD

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PETITIONER: REVISION PETITIONER/COUNTER PETITIONER

RAMAKRISHNAN, AGED 37 YEARS,
S/O.KARUMAN, VALAYAMPARAMBU,
EDATHARA, PALAKKAD.

BY ADV. SRI.PRADEEP JOY
SRI.V.GOPIKRISHNA

RESPONDENTS: RESPONDENTS/PETITIONER

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1. HEMALATHA, AGED 30, D/O.VELAYUDHAN,
CHEVATHODI, PULINELLI, KOTTAYI, ALATHUR
TALUK.

2. ATHIRA, AGED 8 YEARS (MINOR),
REPRESENTED BY MOTHER HEMALATHA,
RESIDING AT CHEVATHODI, PULINELLI,
KOTTAYI, ALATHUR TALUK.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2688 of 2007

Dated this the 24th day of August 2007

O R D E R

Against a concurrent direction for payment of maintenance the petitioner has come before this court. He has been directed to pay maintenance at the rate of Rs.800/- and Rs.700/- respectively per mensum to the claimants, his wife and child. Marriage is admitted. Paternity is admitted. Separate residence is also admitted. There is no plea at all that the petitioner is willing to maintain the wife on condition that she lives with him. Such an offer is not made at all. On the contrary, there is a specific assertion that he is not willing to reside with the woman. In these circumstances, notwithstanding the impassionate appeal of the learned counsel for the petitioner, it has to be held that the petitioner's liability to pay maintenance to the claimants, his wife and child is well founded in law and the said finding cannot be disturbed at this third tier of litigation.

2. The learned counsel for the petitioner then submits that at any rate, it has not been shown that he is a person having sufficient means. Only a person having sufficient means is liable

to pay maintenance to his wife and children. The petitioner admittedly has an employment. There is dispute about the quantum of his income from such employment. But the learned Magistrate at the trial court has alertly noted that he is fit as a fiddle and enjoys robust health. He is bound to work and earn and offer support for his family. An able bodied person cannot avoid the liability to pay maintenance to his wife and children on the plea that he has no employment. Admittedly, he has employment. Even without employment, he is supposed to work, earn and support his family.

3. The last contention is that the quantum of maintenance awarded is excessive. The petitioner is shown to be a person aged about 37 years, his wife is shown to be aged about 30 years and the child is aged about 8 years. Even admittedly, he has some employment. He must work and earn his livelihood. Even reckoning him as a purely unskilled manual worker, direction for payment of maintenance does not deserve interference by invoking the extraordinary inherent jurisdiction available to this court under Section 482 Cr.P.C. The challenge has to and does fail.

4. This petition is in these circumstances dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007